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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/763,701

Filing Date: January 22, 2004

Appellant(s): EYTCHISON ET AL.

Jonathan O. Owens, Reg. No. 37,902  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/30/2009 and the supplemental brief filed

11/30/2009 appealing from the Office action mailed 06/09/2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2001/0021994 A1	Nash	9-2001
2002/0013852 A1	Janik	1-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-2, 4-14, 16-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig Janik (Pub. No US 2002/0013852 A1), hereinafter “Janik” in view of Jason M. Nash (Pub. No 2001/0021994 A1), hereinafter “Nash”.**

**As to independent claim 1**, Janik teaches a method comprising:

identifying a preference corresponding to a user (page 6 paragraph [0082]);  
detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]);

prefetching at least one audio/visual content in response to the current display window and the preference (Figs. 3,4, page 6 paragraphs [0082] [0094], page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]); and

setting a prefetch parameter for a frequency of prefetching in response to the preference (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

**As to dependent claim 2**, Janik teaches setting a prefetch parameter for a range of display windows in response to the preference (Figs. 5, 7, 9).

**As to dependent claim 4**, note the discussion above, Janik teaches the method of claim 1. Janik teaches retaining the user' preference information (page 5, paragraph [0080], page 6

paragraph [0082]). However Janik does not explicitly teach identifying the user associated with the preference. Official Notice is taken, that it is old and well known in the art for a user's preference information to be stored and obtained by identifying the user through a variety of methods, for example, the use of a username and password.

It would have been obvious to one skilled in the art at the time the invention was made than an identification process for retrieving the user's preference would be implemented to eliminate the need for the user to re-enter their preferences for uses at a different time or location.

**As to dependent claim 5**, Janik teaches wherein the audio/visual content includes one of a document, an image, audio data, and video data (page 1 paragraph [0009]).

**As to dependent claim 6**, Janik teaches wherein the preference includes viewing habits and selected genres (Fig. 22, page 6 paragraph [0082]).

**As to dependent claim 7**, Janik teaches wherein the prefetching further comprises transmitting the audio/visual content to a prefetching buffer (page 1 paragraph [0008], page 5 paragraph [0072], page 12 paragraph [0176]). It is well known that a buffer is a region of memory to hold data temporarily until transferred. While Janik teaches the system including memory, he further teaches a Gateway storage peripheral which allows storage of data until the data is transferred, which one skilled in the art would consider equivalent to a buffer.

**As to dependent claim 8**, Janik teaches wherein the prefetching further comprises updating the audio/visual content based on the current display window (page 11 paragraph [0167]).

**As to dependent claim 9**, Janik teaches wherein the preference includes a play list (page 8 paragraph [0132]).

**As to dependent claim 10**, Janik teaches wherein the preference includes a genre selection (Fig. 22, page 6 paragraph [0082]).

**As for dependent claim 11**, Janik teaches wherein the preference includes a plurality of audio/visual content (Fig. 22, page 6 paragraph [0082]).

**As for independent claim 12**, Janik teaches an electronic device-implemented system comprising:

means for identifying a preference (page 6 paragraph [0082]);

means for organizing audio/visual content using a parameter (page 5 paragraphs [0076] [0077]);

means for detecting a current display window being displayed on a display (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

means for prefetching at least one audio/visual content from a memory device in response to the current display window and the preference (Figs. 3, 4, page 6 paragraphs [0082] [0094]).

means for setting a prefetch parameter for a frequency of prefetching in response to the preference (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

**As to independent claim 13**, Janik teaches a method comprising:

detecting an activity (page 6 paragraph [0082] → user selecting preferences);  
setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]),  
wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105],  
page 11 paragraph [0165]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

prefetching a content item based on the prefetch parameter and the current display window (Figs. 3, 4, page 6 paragraphs [0082] [0094]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

**As to dependent claim 14,** Janik teaches wherein the prefetch parameter includes a range of display windows (Figs. 5, 7, 9).

**As to dependent claim 16,** Janik teaches selecting at least one audio/visual content based on a search parameter (page 5 paragraphs [0079]).

**As to dependent claim 17**, Janik teaches the function of wherein the search parameter is a prefetchcontentlist command (page 6 paragraph [0082]). However, Janik does not label this function as a prefetchcontentlist command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter prefetchcontentlist to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

**As to dependent claim 18**, Janik teaches the function of wherein the search parameter is a getcontentlist command (page 8 paragraph [0132], page 9 paragraph [0134]). However, Janik does not label this function as a getcontentlist command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentlist to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

**As to dependent claim 19**, Janik teaches the function of wherein the search parameter is a getcontentbygenre command (page 5 paragraphs [0076] [0077]). However, Janik does not

label this function as a getcontentbygenre command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentbygenre to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

**As to dependent claim 20**, Janik teaches a function of wherein the search parameter is a getmediacontainer command (page 5 paragraphs [0076] through [0079]). However, Janik does not label this function as a getmediacontainer command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getmediacontainer to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

**As to dependent claim 21**, Janik teaches updating the prefetch parameter based on an additional activity (page 11 paragraphs [0165]).

**As to dependent claim 22**, Janik teaches prefetching at least one additional audio/visual content based on a changing current display window (page 11 paragraph [0167]).

**As to independent claim 23**, Janik teaches an electronic device-implemented system comprising:

a media container configured for storing an audio/visual content item (“Internet”, Fig. 1 reference characters 8 and 10);

a prefetch buffer configured for temporarily storing a prefetched audio/visual content item with a memory device (page 1 paragraph [0008], page 5 paragraph [0072], page 12 paragraph [0176]). It is well known that a buffer is a region of memory to hold data temporarily until transferred. While Janik teaches the system including memory, he further teaches a Gateway storage peripheral which allows storage of data until the data is transferred, which one skilled in the art would consider equivalent to a buffer.

and

a presentation layer configured for transmitting the prefetched audio/visual content item to the prefetch buffer based on a user's preference and a current display window (page 3 paragraph [0027], page 5 paragraphs [0076] [0080], page 6 paragraph [0082]), wherein the presentation layer transmits the prefetched audio/visual content item based on a preset frequency of prefetching and further wherein the current display window is displayed on a display (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

**As to dependent claim 24**, Janik teaches an application configured to utilize the prefetched audio/visual content (page 6 paragraph [0084]).

**As to dependent claim 25**, Janik teaches wherein the presentation layer transmits the prefetched audio/visual item content based on a preset range of display windows (page 1 paragraph [0008], page 12 paragraph [0176]).

**As to independent claim 27**, Janik teaches a method comprising:  
detecting an activity (page 6 paragraph [0082] → user selecting preferences);  
setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]),  
wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105],  
page 11 paragraph [0165]);  
detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

prefetching a content item based on the prefetch parameter and the current display window at any time and in response to the detected activity (Figs. 3, 4, page 6 paragraphs [0082] [0094]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

**As to dependent claim 28**, note the discussion of claim 1, Janik teaches organizing audio/visual content. Janik does not explicitly teach organizing the content according to the use pattern of the user. Nash teaches organizing the content according to the use pattern of the user (page 1 paragraph [0040]).

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize content that a user does not have to explicitly select.

**As to dependent claim 29**, Janik teaches storing information based on a user's preference for quick access (page 3 paragraph [0027]. However Janik does not teach where the content stored is content utilized more frequently. Nash teaches organizing the content according to the use pattern of the user (page 1 paragraph [0040].

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize and quickly access content that a user does not have to explicitly select.

#### **(10) Response to Argument**

Beginning on page 9 of Appellant's Appeal Brief (hereinafter the Brief), Appellant argues the following issues which are accordingly addressed below.

- a. Appellant argues Janik does not teach detecting a current display window and prefetching content in response to detecting the current display window. Janik also does not teach prefetching at least one audio/visual content in response to the current display window, the preference, and the use pattern. Further, Janik does not teach detecting and activity. Moreover, Janik does not teach prefetch buffers.

The Examiner disagrees.

Janik teaches prefetching with the user being able to create a preference of content by checking boxes beside content types that they wish to receive, which in returns displays content that is related to the users selections. Janik teaches prefetching a content item based on a prefetch parameter. The detecting is taught by the system recognizing selections by the user for

filtering information. As previously stated the user is able to select content preference, which filters for content that is wanted by the user for viewing, which constitutes parameters. Janik also teaches where content can be accessed, cached, and streamed from the internet at times prescribed by the user. Further Fig. 22 exemplifies a web page (current display window), which receives the preference information for processing of the users preferred content. Only content that has been selected by the user through the user interface which was detected by the system will be retrieved. It should be noted that the term "prefetch" is interpreted as obtaining information in advance for future use. Janik provides multiple examples of obtaining information in advance (page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]) for future use. Additionally Janik teaches that content from the Internet or otherwise digital content is accessed and cached locally in a server in the home or enterprise, so that wide area network bandwidth is optimized. The cached content is sent to thin client devices via a LAN communication link that is much faster than the wide area link, resulting in rich media experiences for the end user. The caching based on the preference based content. Janik does not teach obtaining information based on a use pattern. Nash teaches this aspect of the claimed invention. Nash discloses that content is selected based on monitoring of a user's view habits and based on those habits determining content that should be presented to the user.

The Examiner would like to note that the Appellant does not offer his analysis of why the claimed limitations are not taught by the reference. The Appellant is making general allegations that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguish the from the references.

b. Appellant argues Nash does not teach detecting a current display window and prefetching content in response to detecting the current display window. Nash also does not teach prefetching at least one audio/visual content in response to the current display window, the preference and the user pattern. Furthermore, Nash is non-analogous art.

The Examiner disagrees.

It should first be noted that Nash is not relied upon for teaching the limitations of detecting a current display window and prefetching content in response to detecting the current display window or prefetching at least one audio/visual content in response to the current display window and the preference. As discussed above Janik teaches these limitations.

The Examiner relies upon Nash to teach selecting audio/visual content in response to a user pattern. Nash teaches presenting information to a viewer which contains material that has been explicitly gleaned from the viewers viewing habits, which in itself recognizes the user's current display window to identify what the user is watching.

In Regard to Nash being non-analogous art, Nash teaches obtaining audio/visual information in the form of an advertisement based on a user's preference and/or viewing habits which is the same as the Appellant's invention of prefetching (obtaining) audio/visual content according to preferences of the user. The fact that Nash teaches obtaining information based in a television system does not make it non-analogous art. Both Nash television system and the Appellant's system are in a networked environment for accessing information. It's analogous because they are both obtaining information of relevance based on a user's preferences.

c. Appellant argues that the combination of Janik and Nash is improper. Even if considered proper, the combination of Janik and Nash does not teach prefetching at least one audio/visual content in response to the user selecting a current display window. The combination of Janik and Nash also does not teach prefetching at least one audio/visual content in response to the current display window, the preference and the use pattern.

The Examiner disagrees.

Note the discussion above in regards to the Examiner's interpretation of Janik in view of Nash for teaching the above limitations. While Janik may be directed to scheduled retrieval of content from the Internet as a specific time, the scheduled time can be set by the user and is not completely automated. The Examiner is interpreting "*in response*" as being the system prefetching information in response to the current display window as the information that is inputted into the detected current display window providing a trigger for prefetching information accordingly.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

As stated in the rejection of the claims, both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing. Taking into consideration that both references seek to improve the selection of content that is relevant to a user would provide motivation to one skilled in the art to combine the references to improve relevancy of the content that is retrieved as an end result.

**d. The claims distinguish over Janik, Nash and their combination.**

The Examiner disagrees.

As discussed and reproduced here for the Board's convenience the Examiner's interpretation of Janik in view of Nash as teaching the currently claimed invention.

Janik teaches prefetching with the user being able to create a preference of content by checking boxes beside content types that they wish to receive, which in returns displays content that is related to the users selections. Janik teaches prefetching a content item based on a

prefetch parameter. The detecting is taught by the system recognizing selections by the user for filtering information. As previously stated the user is able to select content preference, which filters for content that is wanted by the user for viewing, which constitutes parameters. Janik also teaches where content can be accessed, cached, and streamed from the internet at times prescribed by the user. Further Fig. 22 exemplifies a web page (current display window), which receives the preference information for processing of the users preferred content. Only content that has been selected by the user through the user interface which was detected by the system will be retrieved. It should be noted that the term "prefetch" is interpreted as obtaining information in advance for future use. Janik provides multiple examples of obtaining information in advance (page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]) for future use. Additionally Janik teaches that content from the Internet or otherwise digital content is accessed and cached locally in a server in the home or enterprise, so that wide area network bandwidth is optimized. The cached content is sent to thin client devices via a LAN communication link that is much faster than the wide area link, resulting in rich media experiences for the end user. The caching based on the preference based content. Janik does not teach obtaining information based on a use pattern. Nash teaches this aspect of the claimed invention. Nash discloses that content is selected based on monitoring of a user's view habits and based on those habits determining content that should be presented to the user.

**e. Claim 1**

Claim 1 is rejected as being taught by Janik in view of Nash for the reasons discussed above.

**f. Claims 2 and 4-11, 28, and 29**

Claims 2, 4-11, 28, and 29 are all dependent on independent claim 1. As presented above, independent claim 1 is rejected over the teachings of Janik in view of Nash. Accordingly, claims 2, 4-11, 28, and 29 are also rejected as being dependent on a rejected base claim.

**g. Claim 12**

Claim 12 is rejected as being taught by Janik in view of Nash for the reasons discussed above.

**h. Claim 13**

Claim 13 is rejected as being taught by Janik in view of Nash for the reasons discussed above.

**i. Claims 14 and 16-22**

Claims 14 and 16-22 are all dependent on independent claim 13. As presented above, independent claim 13 is rejected over the teachings of Janik in view of Nash. Accordingly, claims 14 and 16-22 are also rejected as being dependent on a rejected base claim.

**j. Claim 23**

Claim 23 is rejected as being taught by Janik in view of Nash for the reasons discussed above.

**k. Claims 24 and 25**

Claims 24 and 25 are all dependent on independent claim 23. As presented above, independent claim 23 is rejected over the teachings of Janik in view of Nash. Accordingly, claims 24 and 25 are also rejected as being dependent on a rejected base claim.

**l. Claim 27**

Claim 27 is rejected as being taught by Janik in view of Nash for the reasons discussed above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrea N Long/

Examiner, Art Unit 2175

Conferees:

/William L. Bashore/

Supervisory Patent Examiner, Art Unit 2175

/Kieu Vu/

Supervisory Patent Examiner, Art Unit 2173